



Regional
NSW

Sample Funding Deed

Regional Media Fund

Agency/Division Regional Development & Program

Grantee

Project



Table of Contents

Details	3
Background	4
Terms and Conditions	5
Definitions and Term	5
What you must do	7
About the Grant	8
Material and Information	9
Dealing with Risk.....	11
Terminating the Deed	12
Other Legal Matters.....	13
Executed as a deed	16
Schedule A – Project Plan	17
Schedule B – Reporting Requirements	18

Details

Department	Name	The Crown in right of the State of New South Wales acting through Regional NSW (ABN 19 948 325 463)
	Agency/ Division	Regional Development & Programs
	Address	1 Monaro Street, Queanbeyan NSW 2620

Department Authorised Officer (refer to clause 20 - Notices)	Name	
	Position	
	Address	
	Telephone	
	Mobile	
	E-mail	

Grantee ('You')	Name	
	Address	
	ABN	

Your Authorised Officer (refer to clause 20 - Notices)	Name	
	Position	
	Address	
	Telephone	
	Mobile	
	E-mail	

Program	Regional Media Fund
----------------	----------------------------

Project	[Project Title] The Project is funded under the Program. Details of the Project are set out in Schedule A.
----------------	---

Site (where the Project will be carried out)

Grant	A maximum total amount of \$X. XX (GST exclusive) payable in instalments.
--------------	---

Commencement Date (of this Deed) (refer to clause 2 - Term)	The date on which this Deed is executed by the last party.
--	--

Email address for invoices

Background

Terms and Conditions

Definitions and Term

1. Interpretation and Definitions

1.1. Interpretation

Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the grounds that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2. Definitions

Activity means the activity(s) described in **Schedule A – Project Plan**, which aim to fulfil one or more of the Objectives of the Project.

Activity Period means the period specified in **Schedule A – Project Plan** during which the Activity must be completed.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Capital Equipment means any item of tangible property, purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Grant, which has at that time a value of over \$5,000 inclusive of GST, but does not include Project Material.

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

Confidential Information of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential
- (b) a party has designated as confidential;

- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from information described in paragraph (a), (b) or (c) above,

but does not include information that:

- (a) is in the public domain; or
- (b) a party receiving the information independently knows or develops other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Invoice means an invoice that:

- (a) sets out your contact details including ABN
- (b) specifies the amount to be paid, and whether or not this includes GST;
- (c) identifies this Deed and any Activities to which the payment applies; and
- (d) is sent to the email address specified in the Details or otherwise notified by the Department.

Deed means this funding deed document and includes the Details, Terms and Conditions, **Schedule A – Project Plan** and any other schedules, annexures or other documents cross-referenced in this deed.

GST Law means A New Tax System (Goods and Services Tax) Act 1999.

Instalments means those parts of the Grant which the Department pays to you in the amounts and on the dates set out in **Schedule A**.

Intellectual Property or IP includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include moral rights as defined in the Copyright Act 1968 (Cth).

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

Objectives means the objectives of the Activities described in **Schedule A – Project Plan**, which are the agreed results you must achieve and ensure your subcontractors achieve.

Personal Information has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

Program Guidelines means the published guidelines for the Program available at the DRNSW website which may be updated from time to time.

Project Material means any data, reports, online content or other material created as part of or in performance of the Project, which you provide to the Department.

2. Term

2.1. This Deed will commence on the Commencement Date.

- 2.2. Unless terminated earlier, this Deed will end once you have completed the Project to the Department's satisfaction and the Department has paid all instalments due.

What you must do

3. Your general obligations

- 3.1. You must:
- (a) ensure the Grant or any Instalment is used only for the approved Project;
 - (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
 - (c) comply with the reporting requirements set out in **Schedule B**;
 - (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
 - (e) comply with all policies, guidelines and reasonable directions the Department provides to you; and
 - (f) comply with the Program Guidelines.

4. No overlap with other funding

- 4.1. You agree that there must be no overlap between the Activities funded under this Deed and activities covered by any other funding arrangements you have entered into, or that you may enter subsequently.
- 4.2. You agree to:
- (a) notify the Department immediately of any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters (**Related Funding**); and
 - (b) cooperate with the Department and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding deed.

5. Variation

- 5.1. If you wish to vary the Project, including any Activity or other matter set out in **Schedule A** such as:
- (a) changes to the nature of the Project or the scope of works, Site or revised priorities for the Project; or
 - (b) changes to the timeframe for delivery of the Project, including extensions to completion of Activities,
- you must first make a written request to the Department and provide such information as is reasonably required by the Department.
- 5.2. Following your request for a variation under **clause 5.1**, the Department will consider whether to approve your request and make a decision in its sole discretion. No variation is approved unless and until the Department approves the variation in writing.
- 5.3. You must advise the Department immediately:
- (a) if you are unable to proceed with the Project;

- (b) if the Project has been inactive for a period of 20 Business Days or more;
- (c) (where you own or lease the Site) if you propose to sell or lease any part of the Site; and
- (d) (where you do not own or lease the Site) if you are notified or become aware of a proposal to sell or lease any part of the Site.

About the Grant

6. Paying the Grant

- 6.1. The Department will pay the Instalments as set out in **Schedule A** on condition that:
- (a) the Department receives a Correctly Rendered Invoice from you that clearly identifies the Instalment you are claiming;
 - (b) you have provided the Department with the evidence of compliance required under **clause 8** and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules; and
 - (c) the Activities have been performed to the satisfaction of the Department.
- 6.2. Notwithstanding **clause 6.1**, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.

7. Withholding, Suspension, Changes to Instalments and Repayment

- 7.1. The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.
- 7.2. If you are not complying with this Deed the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department's satisfaction.
- 7.3. If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.
- 7.4. You must repay within 28 days of a demand being sent:
- (a) any Instalment spent in breach of this Deed;
 - (b) all unspent Instalments;
 - (c) any overpayment
 - (d) any interest earned on any Instalment required to be repaid.
- 7.5. Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make in proportion with the extent to which you have failed to complete the Activities of the Project.
- 7.6. The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
- 7.7. Any repayment the Department claims from you under this **clause 7** will be a debt due and owing by you to the Department.

8. GST

- 8.1. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- 8.2. If:
 - (a) despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
 - (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
 - (c) the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
- 8.3. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 8**.
- 8.4. If for any reason the Department pays you an amount under this **clause 8** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

Material and Information

9. Reporting Requirements

- 9.1. You agree to provide the Department with written progress reports at the times and containing the information specified in **Schedule B – Reporting Requirements** (“Progress Reports”).
- 9.2. You must also provide any other information the Department reasonably requires from time to time concerning the Project.
- 9.3. If any Progress Report contains information confidential to you, you should mark the relevant parts of the Progress Report accordingly.
- 9.4. You must provide financial statements of income and expenditure in respect of the Grant (‘the Statements’) to the Department within 60 Business Days after:
 - (a) completion of the Activity or any termination of this Deed, whichever is the earliest; and
 - (b) the completion of each Financial Year in which a Grant is made.
- 9.5. The Statements must include a definitive statement as to whether:
 - (a) the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
 - (b) the Grant was expended for the Project and in accordance with this Deed.
- 9.6. You must keep financial accounts and records relating to the Project so as to enable:
 - (a) all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;

- (b) unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) generation of an income and expenditure statement for each financial year of the Project with the budget, including:
 - i. a schedule of the Capital Equipment acquired, sold, written-off or otherwise disposed of during each financial year; and
 - ii. a comparison of the income and expenditure in each financial year against the budget; and
 - iii. the audit of those records in accordance with Australian Auditing Standards.

9.7. You agree to participate in any survey or feedback regarding the Project or Program, if requested by the Department.

10. Intellectual Property

10.1. Intellectual Property in all Project Material vests in you.

10.2. You grant the Department a non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use the Project Material for any purposes.

11. Confidential Information

11.1. Each party must maintain the confidentiality of all Confidential Information it receives from the other party (subject to **clause 13.2**) unless otherwise agreed in writing.

12. Privacy

12.1. You will:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - i. the individual to whom the Personal Information relates; or
 - ii. the Department,unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this **clause 12**) in any subcontract entered into for the provision of any of the Activities under this Deed.

13. Public Announcements and Acknowledgement

13.1. You must:

- (a) seek the consent of the Department prior to any public announcement about the Project;

- (b) acknowledge the support of the Department, as directed by the Department from time to time:
 - i. in any public statements about the Project;
 - ii. on the home page of any web site established in connection with the Project;
 - iii. on any equipment or other facility funded wholly or in part by the Department;
- (c) You must acknowledge the Department's support of the Project and comply with the applicable NSW Government Guidelines.

13.2. You agree that the Department may disclose information about the Project and the Grant in any media, such as media releases, social media, case studies, promotional material and in response to media enquiries.

14. Disclosure of Information

14.1. You acknowledge that under Part 6.5 of the NSW Government Grants Administration Guide, the Department is required to publish detailed information about the Grant on the NSW Government Grants and Funding Finder at nsw.gov.au/grants-and-funding, except to the extent such information would identify individuals or otherwise conflict with the law.

Dealing with Risk

15. Insurance

15.1. You must maintain, during the term of this Deed:

- (a) a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
- (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
- (c) any additional insurance policies specified by the Department.

15.2. You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.

15.3. On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.

15.4. Without limitation to **clause 15.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

16. Indemnities

16.1. You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- (a) the Grant or the use of any outcomes from the Project;
 - (b) your breach of this Deed;
 - (c) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
 - (d) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
 - (e) any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
 - (f) any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 16.2. Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that the Department's negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability.
- 16.3. Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

Terminating the Deed

17. Termination

- 17.1. Where a party has breached this Deed:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
 - (b) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- 17.2. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- (a) you have provided misleading or incorrect information in your application for funding or in this Deed;
 - (b) you breach any of the following provisions: **clause 3.1** (Your General Obligations); **clause 15** (Insurance), **clause 11** (Confidential Information) and **clause 21.10** (Assignment);
 - (c) the Department considers the Project no longer viable;
 - (d) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
 - (e) you become insolvent, if you are the subject of a debtors or creditors petition under the Bankruptcy Act 1966, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.
- 17.3. This **clause 17** does not exclude or reduce the rights of a party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.

18. Consequences of termination

18.1. On termination or expiry of this Deed:

- (a) accrued rights and obligations are not affected; and
- (b) the Department will pay any Instalments due (after taking into account any Instalments already made prior to that date).

Other Legal Matters

19. Dispute Resolution

19.1. If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 19** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

19.2. A party claiming that a dispute has arisen must notify the other party giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 20** (Notices).

19.3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:

- (a) does not have prior direct involvement in the Dispute; and
- (b) has authority to negotiate and settle the Dispute.

19.4. If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice must refer the Dispute for mediation by the [Australian Disputes Centre Limited](#) (ADC) for resolution in accordance with the mediation rules of the ADC.

19.5. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.

19.6. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

20. Notices

20.1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.

20.2. The receiving party will be deemed to have received the Notice as follows:

- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
- (b) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming delivery; or
 - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (c) if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.

20.3. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

21. General

21.1. Survival:

The following clauses survive termination or expiry of this Deed: **clause 9** (Reporting Requirements), **clause 10** (Intellectual Property), **clause 11** (Confidential Information), **clause 12** (Privacy), **clause 1515** (Insurance), **clause 16** (Indemnities), **clause 17** (Termination), **clause 21.3** (Keeping of records), this **clause 21.1** and any other clause which by its nature is intended to survive this Deed.

21.2. **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.

21.3. **Keeping of records and rights of access to such records** You:

- (a) must keep complete and accurate records and books of account with respect to your performance of the Services (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) authorise the Department and any State or Commonwealth Government department or agency (the "Auditors") that has provided moneys to the Department for the purposes of the Project to which the Services relate, to examine and inspect, at reasonable times and on reasonable Notice, any Contract Material you hold, and allow any such Records to be copied; and
- (c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

21.4. **Conflict of Interest:** You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.

21.5. **Entire Deed:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

21.6. **Severability:** If any clause (or part of any clause) in this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of other clauses of this deed.

21.7. **Inconsistency:** If there is any inconsistency between provisions in this Deed then the order of precedence will be:

- (a) the Details; then
- (b) the Special Conditions; then
- (c) these Terms and Conditions; then
- (d) any Schedules or attached Annexures.

- 21.8. **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
- 21.9. **Waiver:** If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
- Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 21.10. **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
- 21.11. **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
- 21.12. **Electronic execution:** Each party agrees that the other may execute this Deed electronically as provided for in the Electronic Transactions Act 2000.
- 21.13. **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed

Department

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability:

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

Date

You (Company/Organisation)

Signed, Sealed and delivered for on and on behalf of [Click here to enter Company/Organisation name](#) Ltd in accordance with section 127 of the Corporations Act 2001 by:

Signature of Director(1)

Signature of Director(2)/Company Secretary

Name of Director (1)

Name of Director(2)/Company Secretary

Date

Date

Schedule A – Project Plan

Project:

Description of Activities		Evidence of completion	Instalment (excluding GST)	Your Contribution (excluding GST) (If applicable)	Activity Period	When to send invoice
			Total	Total		
Objectives of the Project		<<Insert>>				
Invoicing Requirements (if required)		<<Insert>>				

Schedule B – Reporting Requirements (refer to **clause 3.1(c)**)

1. You must provide to the Department six monthly Activity Progress Reports on the status of all on-going and completed activities for the period to which the report relates, consisting of:
 - (a) a brief description of the activities' objective/s;
 - (b) all activities undertaken during the reporting period;
 - (c) the status of results achieved to date from the project; and
 - (d) the amount of the funding from the Grant and what has been expended on the activity so far.
2. The Department may meet with you each quarter, at the Department's discretion, to discuss progress on the Project.
3. The Department may undertake site visits from time to time to ascertain progress of the activities on providing reasonable notice to you.